

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDRE T. McCANTS,

Petitioner,

ORDER

00-CV-6444L

-vs-

JOSEPH McCOY,

Respondent.

On June 22, 2004, Magistrate Judge Feldman granted petitioner's motion to have his petition held in abeyance so that he could return to state court to exhaust certain claims in addition to those he raised in his original petition for habeas corpus. *See* Docket #30. At the time he requested a stay, petitioner had indicated an intention to move to amend his petition once these claims are exhausted. *see id.*

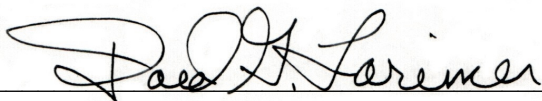
On October 18, 2005, petitioner sent a letter to this Court stating that he was unaware that his petition was still being held in abeyance. He requested that the case "be removed from its abeyance status and set for a decision." This letter was treated as a motion to lift the stay (Docket #31) and, by Order entered October 20, 2005 (Docket #32), this Court ordered that the stay be lifted.

If petitioner still wishes to attempt to amend his habeas petition, the Court directs him to file a motion to amend pursuant to Fed. R. Civ. Proc. 15. In this motion, petitioner shall (1) set forth the proposed claims in detail, (2) state the steps that he has taken to exhaust them in state court, and (3) explain how the claims relate back to the original petition for purposes of Fed. R. Civ. Proc. 15(c). **This motion shall be filed within thirty (30) days following the entry of this**

Order. Should petitioner file a motion to amend, respondent will have thirty (30) days from the date on which petitioner files his motion to file any responsive pleadings.

If petitioner does not wish to amend his petition, then as soon as possible and no later than fifteen (15) days from the date of this Order's entry, petitioner shall submit to the Court a document stating that he is not amending his petition. The Court will consider all of the claims raised by petitioner in his original petition, unless in this submission, petitioner withdraws any of his original claims.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 4, 2006.